IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5081 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RANJITSINH BHAIJIBHAI PADHIYAR

---

Appearance:

1. Special Civil Application No. 5081 of 2004

MS RESHMI MEHTA for MR HARDIK C RAWAL for Petitioner No. 1

MS HINA DESAI for MR MUKESH H RATHOD for Respondent No. 1

---

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 30/04/2004

ORAL JUDGEMENT

1. With the consent of the learned Advocates Ms. Reshmi Mehta with Mr. Rawal appearing for the petitioner and Ms. Hina Desai for the respondent, the matter is taken up for final hearing.

2. Short facts of the case are that the respondent was working as a Watchman of the petitioner Corporation for about last 26 years. It is the case of the petitioner that the respondent remained absent without prior sanctioned leave for a period of about 28 days i.e. 12.9.1999 to 18.10.1999 whereas the defence of the respondent is that medical certificate for sickness during the said period were submitted. The departmental inquiry was held against the respondent, and ultimately in the departmental inquiry, the charge of absentism was proved and thereafter the disciplinary authority imposed the punishment of dismissal from service.

3. The respondent raised a dispute under the I.D. Act which ultimately came to be referred to the Labour Court at Jamnagar for adjudication being Reference [L.C.J.] No. 407 of 2001. The Labour Court held that the departmental inquiry had proceeded exparte and it is not coming on record as to how such a punishment for dismissal from service can be imposed as per the Disciplinary and Appeal Rules, keeping in view of the gravity of the misconduct. The Labour Court also considered the matter under section 11.A of the I.D. Act and passed the award whereby the punishment is imposed of withholding of 5 increments without future effect and on the principle of "no-work-no-pay", the back wages are not awarded. It is under these circumstances the petitioner has approached this Court by the present petition.

4. I have heard the learned counsel appearing for both the sides.

5. There is no dispute on the point that the respondent workman had completed 26 years of service prior to the misconduct in question as Watchman with the petitioner. During the tenure of 26 years of service, no serious misconduct was committed and at one point of time, a punishment was imposed for withholding of three increments without future effect. The learned counsel appearing for the respondent, therefore, submitted that as such the past record of the workman cannot be said to so serious which would attract the extreme penalty of dismissal from service on the ground of the present misconduct. As observed earlier, it is the case of the petitioner that the respondent remained absent without prior sanctioned leave for a period of 28 days from 12.9.1999 to 18.10.1999 whereas as per the respondent, he was sick and the medical certificate for such purpose was also forwarded. Had it been the case of absentism from service on the ground other than sickness, possibly, the matter may be viewed differently. However, in the

present case, the ground is of sickness and there is medical certificate issued by Doctors to the effect that the petitioner is sick and unfit to do the work. If the concerned employee has not been able to attend the duty on account of sickness and medical certificate is forwarded while resuming the duty, the matter can be viewed leniently. Not only that, but a single days' absentism from service as watchman, if has resulted in loss or any unfortunate incident like theft or otherwise, such ground of absentism even for a day may invite the maximum punishment of dismissal from service treating such absentism as a serious misconduct. However, if on account of absentism, may be on account of sickness, no such serious prejudice or loss is caused to the employer so far as the post of Watchman is concerned, the matter can be viewed leniently but such would still continue as misconduct. The Labour Court has found that in view of the past service record of the respondent for 26 years and in view of the undisputed position that the medical certificates were forwarded by the workman concerned, the punishment of dismissal from service deserves to be modified in exercise of the power under section 11.A of the Act and the punishment imposed is of withholding of five increments without future effect. As such it appears that since the workman was watchman, and such a punishment is imposed without future effect, it cannot be said that discretion and jurisdiction is properly exercised by the labour Court.

6. I would have further considered the matter for modifying the quantum of punishment; however, the learned advocate appearing for the respondent workman declared before the Court that if the punishment is modified to the effect that the same shall withholding of 5 increments with future effect, the respondent workman is agreeable for the same. Considering the aforesaid and keeping in view the past service record of the respondent-workman for 26 years, and the ground of absentism is coupled with forwarding of medical certificate as found by the Labour Court, I find that the punishment of withholding of 5 increments with future effect shall be just and reasonable, more particularly when on account of such absentism of the workman concern, no unfortunate incident has happened or no serious loss or prejudice is caused to the employer.

7. As regards the backwages aspect is concerned, even the Labour Court has also not awarded and when as an outcome of the departmental inquiry or as an outcome of the proceedings before the Labour Court, finally the punishment is being imposed, even otherwise also, the

question of backwages may not arise in the present facts and circumstances of the case. Even the learned counsel appearing for the respondent has also not claimed for any backwages nor has made any grievance regarding non-awarding of the backwages by the Labour court as per the impugned award.

8. Under the above circumstances, the award passed by the Labour Court dated 28.3.2003 in Reference [LCJ] No. 407 of 2001 shall stand modified to the effect that instead of punishment of withholding of 5 increments without future effect, the same shall be withholding of 5 increments with future effect, and the other part of the award passed by the Labour Court is not disturbed.

9. The petition is partly allowed to the aforesaid extent. Rule made partly absolute accordingly. Considering the facts and circumstances of the case, no order as to costs.

9. Ms. Desai for the respondent submitted that in view of the decision rendered by this Court, the petitioner may be directed to reinstate the workman within a reasonable time. Considering the facts and circumstances, the respondent shall be reinstated in service within period of one month from the date of the receipt of the order of this Court.

[ JAYANT PATEL, J. ]
mathew